ENVIRONMENTAL PROTECTION AGENCY

AGENCY: Environmental Protection Agency (EPA).

40 CFR Part 761

Polychlorinated Biphenyls (**PCBs**) Manufacturing, Processing, and Distribution in Commerce **Exemptions**

[OPTS-66008; TSH FRL 2389-7]

48 FR 50486

**November** 1, 1983

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses each of the 172 pending individual and class petitions for **exemption** from the prohibition against the manufacture, processing, and distribution in commerce of **PCBs.** This proposed rule identifies 49 petitions which EPA proposes to grant, 73 petitions which EPA proposes to deny, and 50 petitions on which EPA is deferring action. EPA solicits comments on these proposed actions.

DATE: Informal hearings, if requested, will be held in Washington, D.C., Chicago, and San Francisco beginning approximately January 16, 1984. The exact times and locations of the hearings will be available by calling EPA's TSCA Assistance Office. Comments on this proposed rule and requests to participate in the informal hearing must be submitted by January 3, 1984. Petitioners, whose exemption petitions EPA has proposed to deny, may submit additional information by this date. EPA will review this information and reconsider the proposed disposition of these petitions, prior to issuing a final rule. Reply comments made in response to issues raised at each hearing must be submitted no later than one week after the date of that hearing.

See Supplementary Information for EPA's procedures for conducting rulemaking on these exemption petitions.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460. Comments should include the docket number OPTS-66008.

Comments received on this proposed rule will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above.
FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

**TEXT:** SUPPLEMENTARY INFORMATION:

I. Confidential Business Information

EPA encoruages commentors to submit nonconfidential information. However, commentors who believe they can state their position only by using confidential information may submit it in accordance

with the requirements of 40 CFR 750.16 (for manufacturing exemptions) or 40 CFR 750.36 (for processing and distribution in commerce exemptions). Commentors who submit confidential information must, at the same time, submit a nonconfidential summary of the information claimed to be confidential for inclusion in the public record. Please mark confidential information "CONFIDENTIAL" and send it via certified mail to the Document Control Officer (see address listed under "ADDRESS"). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Information not marked "CONFIDENTIAL" will be placed in the public record and may be disclosed publicly by EPA without prior notice.

II. Comments and Rulemaking Procedures

EPA will conduct all hearings in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Commentors who want to participate in the informal hearings must write to EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT") and indicate whether they want to participate in Washington, D.C., Chicago, or San Francisco. All requests to participate must include an outline of the topics to be addressed, the amount of time requested for the opening statement, and the names of participants. The informal hearings are meant to provide an opportunity for commentors to presaent additional information or to discuss new issues, not to repeat information already presented in written comments.

III. Recodification of 40 CFR Part 761

EPA's PCB regulations are published in the Code of Federal Regulations at 40 CFR Part 761. These regulations were recodified in the Federal Register of May 6, 1982 (47 FR 19526) and published in the 1982 edition of the Code of Federal Regulations. This proposed rule uses the recodified section numbers.

IV. Background

*A. Statutory Authority*

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), prohibits the use of PCBs after January 1, 1978, prohibits the manufacture of PCBs after January 1, 1979, and prohibits the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(2) of TSCA creates two exceptions under which EPA may, by rule, allow the use of PCBs to continue. First, EPA may find that the use of PCBs is in a "totally enclosed" manner. Section 6(e)(2)(C) of TSCA defines a "totally enclosed" manner as "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Second, EPA may authorize the use of PCBs in a manner other than in a "totally enclosed" manner, if the Agency finds that such activities "will not present an unreasonable risk of injury to health or the environment."

Section 6(e)(3)(B) of TSCA permits the Administrator to grant **exemptions** from the ban on the manufacture, processing, and distribution in commerce of **PCBs.** Under section 6(e)(3)(B) of TSCA, any person may petition the Administrator for an **exemption** from the prohibitions against the manufacture, processing, and distribution in commerce of **PCBs.**The Administrator may by rule grant such an **exemption** if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." EPA may set terms and conditions for an **exemption** and may grant an **exemption** for not more than one year.

*B. History of **PCB** Rulemaking*

1. ***PCB** Ban Rule.* EPA issued a rule, which was published in the Federal Register of May 31, 1979 (44 FR 31514), to modify the general ban on the manufacture, processing, distribution in commerce, and use of PCBs. This rule is referred to as the PCB Ban Rule and is listed in the Code of Federal Regulations under 40 CFR Part 761. Among other things, the **PCB** Ban Rule (1) prohibited the manufacture, import, processing, distribution in commerce, and export of **PCBs,** unless an **exemption** was granted; (2) generally exclude from regulation material containing **PCBs** in concentrations of less than 50 parts per million (ppm); (3) designated all intact, nonleaking capacitors, electromagnets, and transformers other than railroad transformers as "totally enclosed," thus permitting their use without specific authorization or conditions; and (4) authorized 11 non-totally enclosed uses of PCBs, based on consideration of the health and environmental effects of PCB,s the exposure to PCBs resulting from those uses, the availability of substitutes for the PCB's and the economic impact of restricting those uses. Among the 11 authorized non-totally enclosed uses relevant to this rulemaking are the use of PCBs in servicing transformers (40 CFR 761.30(a)), the use of small quantities of PCBs for research and development until July 1, 1984 (40 CFR 761.30(j)), and the use of PCBs as a mounting medium in microscopy until July 1, 1984 (40 CFR 761.30(k)).

2. *EDF v. EPA.* The Environmental Defense Fund (EDF) obtained judicial review of the PCBs Ban Rule in the U.S. Court of Appeals for the District of Columbia Circuit. *Environmental Defense Fund* v. *Environmental Protection Agency,* 636 F. 1267 (D.C. Cir. 1980). A number of issues decided in the court's opinion, issued on October 30, 1980, are relevant to this rulemaking proceeding. The court invalidated EPA's 50 ppm regulatory exclusion and EPA's determination that the use of PCBs in electrical equipment was "totally enclosed." The court remanded these issues to EPA for further action consistent with its opinion. The court upheld all PCB use authorizations. Other matters discussed in this proposed rule were not subject to the *EDF* v. *EPA* lawsuit.

The effect of this decision would have been to make the manufacture, processing, or distribution in commerce of products containing any concentration of PCBs a violation of section 6(e) of TSCA. The decision also would have had the effect of making the use of all electrical equipment, other than railroad transformers, containing any concentration of PCBs a violation of section 6(e) of TSCA. An immediate ban of these uses not only would have disrupted electrical service but also would have caused severe economic hardship for the public and United States industry, Therefore, EPA, EDF, and certain industry intervenors asked the court to stay its mandate.

The court granted the stay and imposed restrictions on EPA in two separate orders. On February 12, 1981, the court issued an order staying its mandate pending further rulemaking. The text of the court's order is published in the Federal Register of March 10, 1981 (46 FR 16090). The court's order allowed the totally enclosed classification of transformers, capacitors, and electromagnets to remain in effect for the duration of the stay. Therefore, persons who used PCB-containing transformers, capacitors, and electromagnets were premitted to use this electrical equipment during the stay of the court's mandate, provided that they complied with the PCB Ban Rule and the Iterim Measures Program detailed in the Court's order. On April 13, 1981, the court stayed its mandate with respect to activities involving PCBs in concentrations of less than 50 ppm pending further rulemaking. The text of the court's order is published in the Federal Register of May 20, 1981 (46 FR 27615). Thus, the 50 ppm regulatory cutoff remains in effect for the duration of the stay, and persons who manufacture, process, distribute in commerce, or use PCBs in concentrations of less than 50 ppm may continue these activities during the stay.

3. *Court Ordered Rulemaking.* In response to the court order, EPA has issued two rules and is now working on a third rule.

First, EPA authorized the totally enclosed use of PCBs in certain electrical equipment. This rule, the Electrical Equipment Rule, was published in the Federal Register of August 25, 1982 (47 FR 37342). Among other things, this rule authorizes the continued use of PCB small capacitors (40 CFR 761.30(1)); The use of PCB large capacitors until 1988 or longer if certain conditions are met (40 CFR 761.30(1)); and the use of PCB transformers and PCB-contaminated transformers, if certain conditions are met (40 CFR 761.30(a)).

Second, EPA issued a rule excluding from regulation the manufacture, processing, distribution in commerce, and use of PCBs created in closed manufacturing processes and controlled waste manufacturing processes. EPA considers these PCBs to present very low risks. This rule, the Closed and Controlled Waste

Manufacturing Processes Rule, was published in the Federal Register of October 21, 1982 (47 FR 46980). This rule permits the manufacture, processing, and distribution in commerce of **PCBs** without an **exemption,** provided that (1) the **PCBs** are released only in concentrations below the practical limits of quantitation for **PCBs** in air emission, water effluents, products, and process wastes and (2) the wastes from these manufacturing processes are controlled and disposed of in accordance with the methods for disposal specified in the rule.

Third, EPA has begun rulemaking with respect to the manufacture, processing, distribution in commerce, and use of low concentrations of PCBs in other than closed manufacturing processes and processes that produce only controlled wastes. For convenience, EPA refers to this rulemaking as the Uncontrolled **PCB** Rule. EPA reported to the court that it will propose the rule by December 1, 1983, and issue the final rule by July 1, 1984.

*C. History of the **PCB Exemptions** Process*

1. *Background.* While EPA was conducting rulemaking to control **PCBs,** EPA also was addressing the issue of **exemptions** from the prohibitions against the manufacture, processing, and distribution in commerce of **PCBs.** To provide a better understanding of EPA's actions, EPA is providing a brief history of the **PCB exemptions** process.

EPA's Interim Procedural Rules for **PCB** Manufacturing **Exemptions,** 40 CFR 750.10 *et seq.,* were published in the Federal Register of November 1, 1978 (43 FR 50905). These rules describe the required content of manufacturing **exemption** petitions and the procedures EPA will follow in rulemaking on these petitions.

In the Federal Register of January 2, 1979 (44 FR 108), EPA announced that petitioners who has previously filed manufacturing **exemption** petitions could continue the manufacturing or importation activity for which they sought **exemption** until EPA acted on their petitions.

EPA's Interim Procedural Rules for **PCB** Processing and Distribution in Commerce **Exemptions,** 40 CFR 750.30 *et seq.,* were published in the Federal Register of May 31, 1979 (44 FR 31558). These rules describe the required content of processing and distribution in commerce **exemption** petitions and the procedure EPA will follow in rulemaking on these petitions.

EPA's proposed rule for **PCB** manufacturing **exemptions,** which addressed the **exemption** petitions received at that time, was published in the Federal Register of May 31, 1979 (44 FR 41564). EPA held a hearing and received comments on that proposed rule. EPA included additional manufacturing exemption petitions and extended the reply comment period on the proposed rule in a notice published in the Federal Register of July 20, 1979 (44 FR 42727).

In the Federal Register of March 5, 1980 (45 FR 14247), EPA clarified its previously announced policy for acceptance of late **PCB exemption** petitions published in the Federal Register of January 2, 1979 (44 FR 108) and May 31, 1979 (44 FR 31514). In that notice, EPA stated that it would require persons filing late exemption petitions to show "good cause" why the petition is being submitted after the filing deadlines of December 1, 1978 (for manufacturing exemptions) or July 1, 1979 (for processing and distribution in commerce exemptions). If a petitioner shows "good cause," EPA permits it to continue the activities for which it seeks exemption until EPA acts on the exemption petition, as long as the activities were underway before January 1, 1979 (for manufacturing) and July 1, 1979 (for processing and distribution in commerce).

In the Federal Register of May 1, 1980 (45 FR 29115), EPA reiterated the policy stated in 40 CFR 761-20(b) by closing the border to the export and import of **PCBs** for disposal after that date. In addition, EPA affirmed that exports of **PCBs** for use would be permitted only if EPA granted an **exemption** to do so pursuant to section 6(e)(3)(B) of TSCA. EPA set forth criteria it would consider in reviewing a petition for **exemption** to export **PCBs.** A petitioner must show that the nation to which export is destined has proper **PCB** disposal facilities and that the **PCBs** will be used for a use that is authorized in the United States. EPA also explained that, in the context of exports, the requirement to show good faith efforts to find a substitutes puts the burden on the petitioner to show that there are no substitute for the **PCBs,** produced either by the

petitioner or a competitor, and that the petitioner proves that it has expended substantial amounts of time and money searching for a substitute.

2. *Renewal of **PCB Exemption** Petitions.* As EPA acted to comply with the court ordered rulemaking, it became necessary to resolve a number of issues involving the outstanding **exemption** petitions. In June 1982 EPA sent a letter to each of approximately 400 petitioners who had previously requested an exmption to manufacture, process, or distribute in commerce **PCBs.** Since the information in many of the petitions was old, EPA asked these petitioners to renew their petitions, if necessary, by submitting updated information. EPA received and accepted 172 **exemption** petitions (including 164 renewed and eight newly-filed petitions), which EPA evaluated according to the requirements of TSCA and the Interim Procedural Rules for **PCB Exemptions.** The remainder of the petitions were not renewed, or dismissed by EPA because the activities for which **exemption** was requested did not require an **exemption.**

Among the 172 petitions that EPA received and accepted are 50 **exemption** petitions to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater **PCBs.** These petitions are listed under unit VII.J. Depending on the definition of **PCBs** and the method of calculating **PCB** concentration levels in the Uncontrolled **PCB** Rule, these petitioners may be excluded from the **PCB** Ban Rule and would not need **exemptions.** EPA believes that any proposal now would be premature and, therefore, is deferring action on these petitions until it proposes the Uncontrolled **PCB** Rule in December 1983. In this rule EPA is proposing to act on the remainder of the petitions that will not be affected by the Uncontrolled **PCB** Rule.

*D. Effect of This Rule on Previous Policy Statements*

Once EPA has acted to grant or deny an **exemption** petiton, EPA's policy of permitting activities to continue will become unnecessary. EPA will therefore revoke that policy, which was published in the Federal Register of January 2, 1979 (44 FR 108) and March 5, 1980 (45 FR 14247), as of the effective date of the final rule in this rulemaking. This means that a petitioner, whose **exemption** request is granted, will be allowed to manufacture, process, or distribute in commerce **PCBs** only for the period of time granted in this rule. When the **exemption** expires, a petitioner will not be permitted to engage in such activities, even if it renews its **exemption** request, until EPA has acted on that request.

EPA will continue its policy of requiring petitioners who file late exemption petitions to show "good cause" why EPA should accept the petition, as described in the notice published in the Federal Register of March 5, 1980 (45 FR 14247).

V. Unreasonable Risk Determination

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to demonstrate that granting an **exemption** would not result in an unreasonable risk of injury to health or the environement. In this rule EPA proposes to grant some **exemption** petitions to manufacture, process, and distribute in commerce **PCBs** and to deny others. EPA's unreasonable risk findings for each **exemption** petition are discussed in later units of this proposed rule.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting or denying each **exemption.** Specifically, EPA considers the following factors:

1. The effects of **PCBs** on human health and the environment, including the magnitude of **PCB** exposure to humans and the environment.

2. The benefits to society of granting an **exemption** and the reasonably ascertainable costs to petitioner of denying an **exemption** petition.

These are the same factors that EPA must consider in deciding whether a chemical presents an unreasonable risk under sections 6(a) and 6(e) of TSCA.

*A. Effects on Human Health and the Environment*

In deciding whether to grant an **exemption,** EPA considered the effects of **PCBs** on human health and the environment, including the magnitude of **PCB** exposure to humans and the environment. The effects of **PCBs** were described in various documents that are part of the rulemaking record for the May 31, 1979, PCB Ban Rule. EPA evaluated this information, new information submitted to the Agency, and other recent literature. The results are presented in EPA's "Response to Comments on Health Effects of PCBs," which is included in the rulemaking record and summarized below. Copies of this document are available through EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT").

1. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

In some cases chloracne may occur in humans exposed to PCBs. Chloracne is painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effect to be significant.

in addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have been demonstrated on immature animals, following exposures to PCBs prenatally and via breast milk.

Available animal studies indicate an oncogenic potential, the degree of which would depend on exposure. Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

Available data indicate little or no mutagenic activity from PCBs. EPA believes, however, that more information is needed to draw a conclusion on the possibility of mutagenic effects from PCBs.

2. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are released into the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

3. *Risks* . Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that **PCBs** present a hazard to the environment.

Minimizing exposure to **PCBs** should minimize any potential risk. EPA has taken exposure into consideration when evaluating each **exemption** petition, and this is discussed in later units of this proposed rule.

*B. Benefits and Costs*

The benefits to society of granting an **exemption** vary, depending on the activity for which exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken the benefits and costs into consideration when evaluating each exemption

petition. Because of the range of activities for which exemptions are requested, the specific benefits and costs are discussed in later units of this proposed rule.

VI. Good Faith Effort Determination

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate a good faith effort to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for **PCBs.** EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort. For each petition, EPA considered the kind of **exemption** the petitioner is requesting, whether substitutes exist and are readily available, and whether the petitioner expended time and money to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-**PCBs** for PCBs or to show why it did not seek to substitute non-**PCBs** for **PCBs.** EPA's evaluation of each petitioner's attempt to demonstrate a good faith effort is discussed in later units of this proposed rule.

VII. Disposition of **Exemption** Petitions

*A. Distribution in Commerce of **PCB** Small Capacitors for Purposes of Repair and **PCB** Equipment Containing **PCB** Small Capacitors*

EPA received 20 petitions to distribute in commerce existing inventories of PCB small capacitors for purposes of repairing equipment such as air conditioners, microwave ovens, and office machines. EPA also received 21 petitions to distribute in commerce existing inventories of PCB equipment containing PCB small capacitors, including fluorescent light ballasts, light fixtures, small electric motors, computer assemblies, air conditioners, and office machines. In 40 CFR 761.3(d)(1), EPA defines "PCB small capacitor" as "a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid." **PCB** small capacitors commonly contain between 0.1 and 0.6 pounds of **PCBs.** In 40 CFR 761.30(1), EPA authorizes the use of the **PCB** small capacitors indefinitely. EPA proposes to grant **exemptions** to the petitioners listed below for the following reasons:

EPA has concluded that granting these **exemptions** would not present an unreasonable risk of injury to health or the environment. **PCBs** are rarely released when these capacitors and equipment are distributed in commerce and used. Although granting these **exemptions** would allow approximately 720,000 pounds of **PCBs** in small capacitors to be distributed in commerce, individual capacitors: (1) Contain small quantities of **PCB** dielectric fluid; (2) contain significant amounts of absorbent material such as paper; and (3) are airtight. The petitioners, their customers, and the ultimate users are not likely to be exposed to the PCBs from the capacitors or equipment, nor is release of PCBs to the environment likely. Moreover, EPA believes it is more reasonable to allow the petitioners to distribute these PCB small capacitors as replacement parts, which will eventually be randomly disposed of by individual users in small amounts over time, than to deny the petitions, which might concentrate **PCBs** in certain locations if one or more petitioners disposed of their **PCB** small capacitors at once.

EPA estimates the total costs associated with denial of all the **exemption** petitions to be at least $7.52 million. The specific costs would vary from petitioner to petitioner. The cost estimate includes: (1) The cost of replacing all **PCB** small capacitors sold for purposes of repair ($4.61 million); and (2) the cost of disposing of ballasts, fluorescent light fixtures, and PCB small capacitors removed from other PCB equipment, and the cost of replacing such equipment with non-**PCB** equipment (at least $2.91 million). The estimated costs would be even greater if the additional costs associated with identifying and removing **PCB** small capacitors that have already been processed into existing **PCB** equipment were included.

Finally, granting these **exemptions** will benefit society by allowing useable articles and equipment to be distributed in commerce and used.

EPA also has concluded that each of these petitioners demonstrated a good faith effort to substitute non-**PCB** capacitors for PCB small capacitors. Some petitioners began substituting non-PCB capacitors as early as 1977, and all petitioners stopped purchasing PCB small capacitors by July 1979 and now restock only with non-**PCB** capacitors. Each of these petitioners provided information to show that it reduced the

number of **PCB** items and the volume of **PCBs** in its inventory. Each of the petitioners who request an **exemption** to distribute inventories of **PCB** equipment has redesigned and modified equipment to accommodate the non-**PCB** capacitors it now processes into equipment.

EPA proposes to grant **exemptions** for one year to distribute in commerce **PCB** small capacitors for purposes of repair to:

Advance Transformer Co., Chicago, IL 60618 (PDE 4).

Air Conditioning Contractors of America, Washington, DC 20036 (PDE 7).

Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE 26.2).

B & B Motor & Control Corp., New York, NY 10012 (PDE 30).

Complete-Reading Electric Co., Hillside, IL 60162 (PDE 48).

Dunham-Bush, Inc., Harrisonburg; VA 22801 (PDE 71).

Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE 84).

Harry Alter Co., Chicago, IL 60609 (PDE 111).

Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE 161).

Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE 157.1)

National Association of Electrical Distributors, Stamford, CT 06901 (PDE 163).

National Capacitor Corp., Garden Grove, CA 92641 (PDE 165)

Service Supply Co., Phoenix, AZ 85013 (PDE 237).

Webzeb Enterprises, Inc., Lebanon, IN 46052 (PDE 297).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

In addition, EPA proposes to grant **exemptions** for one year to distribute in commerce **PCB** equipment containing **PCB** small capacitors to :

Advance Transformer Co., Chicago, IL 60618 (PDE 4).

Coleman Co., Inc., Wichita, KS 67201 (PDE 45.1).

Donn Corp., Westlake, OH 44145 (PDE 63).

Dunham-Bush, Inc., Harrisburg, VA 22801 (PDE 71).

Emerson Quite Kool Corp., Woodbridge, NJ 07095 (PDE 84).

Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE 93).

Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE 103).

GTE Products Corp., Danvers, MA 01923 (PDE 105).

King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE 139).

L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE 223).

Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE 157.3).

National Association of Electrical Distributors, Stamford, CT 06901 (PDE 163).

Royalite Co., Flint, MI 48502 (PDE 231).

Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE 246).

Transco, Inc., West Columbia, SC 29169 (PDE 261.1).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, and distribution in commerce of **PCBs.** Although EPA proposes to grant **exemptions** to the above-named petitioners, it strongly urges them to eliminate their remaining inventories of **PCBs** before the **exemption** expires. Most of the petitioners have had since July 1979 to process and distribute their inventories of **PCBs** and providing an additional year will make it possible for them to eliminate any **PCBs** that remain in stock. Any petitioner who requests a further **exemption** after its one year **exemption** expires must overcome the substantial burden of showing why it did not eliminate its inventory of **PCBs.**

EPA proposes to deny the following **exemption** petitions, because the petitioners did not provide the information necessary for EPA to conclude that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment and that the petitioners made a good faith effort to substitute non-**PCBs** for **PCBs:**

Aireco Supply, Inc., Arlington, VA 22202 (PDE 8), did not provide information describing the specific activities for which it seeks **exemption,** including a description of the **PCB** articles or equipment to be distributed in commerce; the length of time requested for **exemption;** the number of **PCB** articles or equipment to be distributed; the amount of **PCBs** to be distributed (by pound and/or volume); its basis for contending that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made a good faith effort to substitute non-**PCBs** for **PCBs;** and the reasonably ascertainable economic consequences of denial.

Carrier Corp., Syracuse, NY 13221 (PDE 39, 39.1, and 39.2), did not provide information about the number of PCB small capacitors and pieces of PCB equipment to be distributed; the amount of PCBs to be distributed (by pound and/or volume) in the capacitors and equipment; and the reasonably ascertainable economic consequences of denial.

General Electric Co., Fairfield, CT 06431 (PDE 99), did not provide information about the number of pieces of **PCB** equipment to be distributed and the amount of **PCBs** to be distributed (by pound and/or volume).

Raytheon Co., Lexington, MA 02173 (PDE 208 and 209), did not provide information describing the specific activities for which it seeks **exemption,** including a description of the **PCB** capacitors and equipment to be distributed in commerce; the number and size of **PCB** capacitors to be distributed; its basis for contending that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made a good faith effort to substitute non-**PCBs** for **PCBs;** and the resonably ascertainable economic consequences of denial.

RIP, Inc., Fort Worth, Tx 76112 (PDE 227), did not provide information about the number of PCB small capacitors to be distributed; the amount of PCBs to be distributed (by pound and/or volume); and the reasonably ascertainable economic consequences of denial.

Traco Industrial Corp., New York, NY 10027 (PDE 276), did not provide information to describe the size of capacitors it wants to distribute in commerce; the amount of **PCBs** to be distributed (by pound and/or volume); its basis for contending that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made a good faith effort to substitute non-**PCB** capacitors for **PCB** small capacitors; and the reasonably ascertainable economic consequences of denial.

Trans-State Corp., Houston, TX 77036 (PDE 281), did not provide information about the amount of PCBs to be distributed in PCB small capacitors (by pound and/or volume); and the reasonably ascertainable economic consequences of denial.

*B. Processing PCB Articles and PCB Equipment into other Equipment and Distributing in Commerce That Equipment*

EPA received 16 petitions to process existing inventories of PCB articles and PCB equipment into other equipment and to distribute in commerce that equipment. Five petitioners want to process PCB small capacitors into ballasts; ballasts into fluorescent light fixtures; and small electric motors into equipment. Raytheon Co. submitted nine petitions to process PCB articles (small capacitors, large capacitors, and transformers) and PCB equipment containing such articles into defense equipment containing such articles into defense equipment, and two petitions to process **PCB** capacitors into office equipment. All the petitioners want to distribute in commerce the finished **PCB** equipment. EPA proposes to grant **exemptions** to all the petitioners, except Raytheon, for the following reasons:

EPA has concluded that granting these **exemptions** would not present an unreasonable risk of injury to health or the environment. Although granting these **exemptions** would allow approximately 191,000 pounds of **PCBs** in small capacitors to be processed and distributed in commerce, individual capacitors: (1) Contain small quantities of **PCB** dielectric fluid; (2) contain significant amounts of absorbent material such as paper; and (3) are airtight. Thus, PCBs are rarely released when PCB small capacitors and PCB equipment containing PCB small capacitors are processed, distributed in commerce, and used. Consequently, the petitioners, their customers, and the ultimate users are not likely to be exposed to the PCBs in the capacitors or equipment, nor is released of PCBs to the environment likely.

EPA estimates the total costs associated with denial of all the petitions to be at least $1.63 million. The specific costs would vary from petitioner to petitioner. The cost estimate includes: (1) The cost of disposing of existing inventories of PCB small capacitors held for processing; and (2) the cost of replacing existing inventories of PCB small capacitors and other equipment containing PCB small capacitors. The estimated cost would be even greater if the cost associated with identifying and removing PCB small capacitors that have already been processed into existing PCB equipment were included. It should be noted that, except for information about the volume of **PCBs** submitted by Raytheon, the number of pounds of **PCBs** and the costs of denial are included in the totals previously discussed under unit VII.A.

Finally, granting these **exemptions** will provide benefits by allowing useable articles and equipment to be processed, distributed in commerce, and used.

EPA also has concluded that each of these petitioners demonstrated a good faith effort to develope **PCB** substitutes. Each of these petitioners provided information to show that it reduced the number of **PCB** items and the volume of **PCBs** in its inventory. Furthermore, each of these petitioners provided information to show that it has redesigned and modified equipment to accomodate non-**PCB** items.

EPA proposes to grant **exemptions** for one year to process **PCB** small capacitors and **PCB** equipment containing **PCB** small capacitors into other equipment and to distribute in commerce that equipment to:

Advance Transformer Co., Chicago, IL 60618 (PDE 4).

Gould, Inc., Electric Motor Division, St. Louis, Mo 63166 (PDE 103).

GTE Products Corp., Danvers, MA 09123 (PDE 105).

L. E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE 223).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, and distribution in commerce of **PCBs.** Although EPA proposes to grant **exemptions** to the above-named petitioners, it strongly urges them to eliminate their inventories of **PCBs** before the **exemption** expires. Most of the petitioners have had since July 1979 to process and distribute their inventories of **PCBs** and providing an additional year will make it possible for them to eliminate any **PCBs** that remain in stock. Any petitioner who requests a further **exemption** after its one year **exemption** expires must overcome the substantial burden of showing why it did not eliminate its inventory of **PCBs.**

EPA proposes to deny the following **exemption** petitions, because the petitioner did not provide the information necessary for EPA to conclude that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment and that the petitioner made a good faith effort to substitute non-**PCBs** for **PCBs:**

Raytheon Co., Lexington, MA 02173 (PDE 193-196, 201, 208, 209, 211, 212, 214, and 215), did not provide information describing the specific activities for which it seeks **exemption,** including a description of the **PCB** articles and equipment to be processed and distributed in commerce; the number of **PCB** small capacitors, **PCB** large capacitors, **PCB** transformers, and **PCB**-contaminated transformers to be processed and the number of pieces of **PCB** equipment to be distributed; its basis for contending that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made a good faith effort to substititute non-**PCBs** for **PCBs;** and the reasonably ascertainable economic consequences of denial.

*C. Processing and Distributing in Commerce **PCBs** for Purposes of Servicing Customers' Transformers*

EPA received 34 **exemption** petitions to process and distribute in commerce **PCBs** for purposes of servicing customers' **PCB** transformers and **PCB**-contaminated transformers. As defined in 40 CFR 761.3(y), **PCB** transformers contain 500 ppm or greater PCBs; as defined in 40 CFR 761.3(z), PCB-contaminated transformers contain at least 50 but less than 500 ppm PCBs. Some petitioners want to introduce their own PCB fluid (i.e., fluid containing 500 ppm or greater PCBs) into a customer's PCB transformer. Some petitioners want to introduce their own **PCB**-contaminated fluid (i.e., fluid containing at least 50 but less than 500 ppm **PCBs**) into a customer's **PCB** transformer or **PCB**-contaminated transformer. Each of these petitioners needs an **exemption** to engage in such activities, because the activities constitute processing of **PCBs,** as defined in section 3(10) of TACA and 40 CFR 761.3(bb), and distribution in commerce of **PCBs,** as defined in section 3(4) of TSCA and 40 CFR 761.3(i). In contrast, a person does not need an **exemption** to drain **PCB** fluid or **PCB**-contaminated fluid from a customer's transformer and later return it to the same transformer. Nor does a person need an **exemption** to introduce

**PCB** fluid he already owns into his own **PCB** transformer or to introduce **PCB**-contaminated fluid he already owns into his own **PCB** transformer or **PCB**-contaminated transformer for purposes of servicing. These activities are authorized by EPA's Electrical Equipment Rule under 40 CFR 761.30(a), published in the Federal Register of August 25, 1982 (47 FR 37342), and do not require an **exemption,** because there is no processing or distribution in commerce of **PCBs.** Finally, a person does not need an **exemption** to introduce non-**PCB** fluid to any transformer, and EPA strongly encourages the use of non-**PCB** fluid as a substitute for **PCB** fluid and **PCB**-contaminated fluid.

Thirty of these petitions are renewed petitions for activities that were underway before July 1, 1979, and four are new petitions for activities that were not underway before July 1, 1979. As explained in unit IV. C. 1., petitioners whose activities were underway before that date are permitted to continue the activities for which they seek exemption until EPA acts on the **exemption** petition.

EPA proposes to deny all 34 **exemption** petitions. EPA has concluded that granting these **exemptions** would result in an unreasonable risk of injury to health or the environment, because the added risk of exposure to **PCBs** resulting from transformer-related servicing activities and the small costs of denial outweigh the relatively small benefits to society of allowing these activities to continue. EPA has determined that the transfer of PCB fluid and PCB-contaminated fluid between transformer servicing companies and their customers is likely to result in a significant risk of exposure to humans or the environment to **PCBs** due to the normal leaks and spills attendant to handling liquid **PCBs and PCB**-containing transformers. In addition, the petitioners did not provide estimates of the volume of their business which requires **exemption** or the reasonably ascertainable consequences of denial. EPA has estimated that denying these petitions would result in small costs to petitioners. EPA estimated the total costs of denying all the petitions to be approximately $20,000 to $36,000. This cost estimate includes $17,500 to $29,200 for processing and distributing in commerce PCB fluid and $2,500 to $6,800 for processing and distributing in commerce PCB-contaminated fluid. These cost estimates represent: (1) The incremental costs of substituting new non-PCB fluid to "top off" transformers; and (2) disposal of PCB fluid and PCB-contaminated fluid that could not be processed and distributed in commerce. Assuming these costs are divided evenly among the approximately 334 companies represented by the 34 petitions, the average annual cost would be less than $90 per company for denying petitions to process and distribute in commerce PCB fluid and less than $20 per company for denying petitions to process and distribute in commerce PCB-contaminated fluid. In sum, the potential for exposure to PCBs and the small costs of denial far outweigh any benefits of allowing the petitioners to process and distribute in commerce their PCB fluid and PCB-contaminated fluid.

This reasoning should be contrasted with that supporting the Electrical Equipment Rule, which permits owners of PCB transformers and PCB-contaminated transformers to service their own transformers with their own PCB fluid and PCB-contaminated fluid, provided they comply with the servicing restrictions of 40 CFR 761.30(a). In that rule, EPA determined that allowing such activities to continue was necessary to avoid disrupting efficient and reliable electrical service throughout the United States, an enormous benefit that far outweighed the potential risk of exposure to humans or the environment associated with the use and servicing of **PCB**-containing transformers. The petitioners did not provide information for EPA to reach a similar conclusion with respect to their servicing activities.

EPA considered granting **exemption** in part, by permitting petitioners to process and distribute in commerce only **PCB**-contaminated fluid for purposes of servicing customers' **PCB** transformers and **PCB**-contaminated transformers. Granting such an **exemption** would remove from circulation the transformer dielectric fluid containing the most concentrated level of **PCBs.** However, the petitioners did not provide EPA with information to justify even such a limited **exemption.** EPA especially solicits comment on whether it should grant **exemptions** to process and distribute in commerce **PCB**-contaminated fluid for purposes of servicing customers' transformers.

EPA proposes to deny the following **exemption** petitions to process and distribute in commerce **PCBs** for purposes of servicing customers' transformers:

Ace Transformer Service Co., Inc., Livonia, MI 48154 (PDE 3).

American Electric Corp., Jacksonville, FL 32205 (PDE 18).

American Environmental Energy Corp., Baldwin, FL 32220 (PDE 18.1).

American Environmental Protection Corp., Jacksonville, FL 32205 (PDE 18.2).

Davis and Associates, Corpus Christi, TX 78413 (PDE 59).

Eastern Electric of Florida, Inc., Jacksonville, FL 32205 (PDE 73).

Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE 77).

Electrical Installation & Service Corp., Rio Piedras, PR 00928 (PDE 166.3).

Electro Test, Inc., San Ramon, CA 94583 (PDE 166.2).

Environmental Cleaning Specialists, Inc., Kingston, PA 18704 (PDE 84.1).

General Electric Co., Fairfield, CT 06431 (PDE 99).

High Voltage Maintenance Corp., Mentor, OH 44060 (PDE 115).

Interstate Transformer, Inc., Ellwood City, PA 16117 (PDE 128).

Jerry's Electric, Inc., Colman SD 57017 (PDE 133).

Niagara Transformer Corp., Buffalo, NY 14225 (PDE 169.1).

National Electrical Testing Association, Inc., Dayton, OH 45429 (PDE 166).

Northeast Electrical Testing, Inc., Meridian, CT 06450 (PDE 166.1).

Northern Electrical Testing, Inc., Troy, MI 48098 (PDE 170.1).

Ohio Transformer Corp., Louisville, OH 44641 (PDE 173).

Recovery Specialists, Inc., Saline, MI 48176 (PDE 221).

Solomon Electric Supply, Inc., Solomon, KS 67480 (PDE 247).

Sunohio, Canton, OH 44707 (PDE 264).

T & R Service Co., Colman, SD 57017 (PDE 265).

Temco, Inc., Corpus Christi, TX 78410 (PDE 268).

Texas Power & Light Co., Dallas, TX 75266 (PDE 271).

Three-C Electric Testing Co., Ashland, MA 01721 (PDE 275).

Transformer Consultants, Division of S.D. Myers, Inc., Akron, OH 44310 (PDE 277).

Transformer Inspection Retrofill Corp., Royal Oak, MI 48073 (PDE 278).

Transformer Sales and Service, Inc., Smithfield, NC 27577 (PDE 108).

Transformer Service, Inc., Concord, NH 03301 (PDE 280.1).

Transformer Service, Inc., Akron, OH 44309 (PDE 280).

U.S. Transformer Co., Jordan, MN 55352 (PDE 289).

Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE 294).

Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

*D. Processing and Distributing in Commerce **PCBs** in Buying and Selling Transformers*

EPA received 12 **exemption** requests from petitioners who want to process and distribute in commerce **PCBs** in buying and selling used **PCB** transformers and **PCB**-contaminated transformers. Each of these petitioners is engaged in one or more of the following activities for which **exemption** is required: (1) Buying and selling **PCB** transformers or **PCB**-contaminated transformers without introducing **PCBs** into these transformers; (2) buying **PCB** transformers or **PCB**-contaminated transformers, introducing non-**PCB** fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v), published in the Federal Register of August 25, 1982 (47 FR 37342); and (3) buying **PCB** transformers or **PCB**-contaminated transformers, introducing **PCB** fluid or **PCB**-contaminated fluid into these transformers (including fluid originally taken from and returned to the same transformer), and then selling them. The petitioners who introduce **PCBs** into these transformers need an **exemption,** because they are processing **PCBs,** as defined in section 3(10) of TSCA and 40 CFR 761.3(bb). The petitioners who sell these transformers need an **exemption,** because they are distributing in commerce **PCBs,** as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

All of the petitions are renewed petitions for activities that were underway before July 1, 1979. As explained in unit IV.C.1., petitioners whose activities were underway before that date are permitted to continue the activities for which they seek **exemption** until EPA acts on the **exemption** petition.

Not all activities for which EPA received **exemption** petitions require **exemption.** EPA does not regulate the distribution in commerce of certain **PCB** transformers and **PCB**-contaminated transformers. In accordance with section 6(e)(3)(C) of TSCA and 40 CFR 761.20(c)(1), a person may distribute in commerce **PCB** transformers and **PCB**-contaminated transformer without the need for an **exemption** prouided that the transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale, and the transformer is totally enclosed when it is subsequently distributed in commerce. For purposes of distribution in commerce of transformers sold for purposes other than resale, EPA considers only intact and nonleaking transformers to be totally enclosed, for the reasons stated in the notice published in the Federal Register of August 25, 1982 (47 FR 37342). If all the conditions stated above are

not met, a person must petition for and obtain an **exemption** from EPA before distributing in commerce the **PCB** transformer or **PCB**-contaminated transformer. Even if all the conditions are met, a person needs an **exemption** to introduce **PCBs** into such a transformer (including **PCB** fluid or **PCB**-contaminated fluid originally taken from and returned to the same transformer), because this is processing **PCBs,** as defined in section 3(10) of TSCA and 40 CFR 761.3(bb).

EPA proposes to deny all 12 **exemption** petitions, because the petitioners did not provide information for EPA to conclude that granting these **exemptions** would not result in an unreasonable risk of injury to health or the environment. EPA has determined that the processing and distribution in commerce of **PCB** fluid, **PCB**-contaminated fluid, and **PCB**-containing transformers are likely to result in a significant risk of exposure to humans or the environment, due to the normal leaks and spills attendant to handling liquid **PCBs and PCB**-containing transformers. In addition, the petitioners did not provide estimates of the volume of their business which requires **exemption** or the reasonably ascertainable economic consequences of denial. EPA was able to estimate the costs of denying these petitions on an individual transformer basis but could not estimate total costs, since the petitioners did not estimate the number of transformers to be bought and sold. Denying the petitions would raise the costs of rebuilding or refurbishing used transformers, since PCB fluid and PCB-contaminated fluid would have to be replaced with non-PCB fluid prior to resale. EPA estimated that the incremental costs of denial would be $90 to $240 for an average size PCB-contaminated transformer and $2,400 to $4,000 for an average size PCB transformer, assuming all the transformer fluid had to be replaced in both cases. Depending on the purchase price and resale value of used transformers, these additional costs may render a portion of petitioners' buying and selling activities unprofitable. In the absence of information to show that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment, EPA is proposing to deny **exemptions** to these petitioners.

EPA considered granting **exemptions** in part, by permitting petitioners to process only **PCB**-contaminated fluid into **PCB**-containing transformers and to distribute in commerce only **PCB**-contaminated transformers. Granting such an **exemption** would remove from circulation the trasformer dielectric fluid containing the most concentrated level of **PCBs.** However, the petitioners did not provide EPA with information to justify even such a limited **exemption.** EPA especially solicits comment on whether it should grant **exemptions** to process and distribute in commerce **PCB**-contaminated fluid in buying and selling transformers.

EPA proposes to deny the following **exemption** petitions to process and distribute in commerce **PCBs** in buying and selling transformers:

Davis and Associates, Corpus Christi, TX 78413 (PDE 59). Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE 78).

Electro Test, Inc., San Ramon, CA 94583 (PDE 166.2).

G & S Motor Equipment Co., Kearny, NJ 07032 (PDE 94).

Interstate Transformer, Inc., Ellwood City, PA 16117 (PDE 128).

Jerry's Electric, Inc., Colman, SD 57017 (PDE 133).

Ohio Transformer Corp., Louisville, OH 44641 (PDE 173).

Solomon Electric Supply, Inc., Solomon, KS 67480 (PDE 247).

Temco, Inc., Corpus Christi, TX 78410 (PDE 268).

Transformer Sales and Service, Inc., Smithfield, NC 27577 (PDE 108).

U.S. Transformer, Inc., Jordan, MN 55352 (PDE 289).

Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE 294).

*E. Research and Development*

EPA received four petitions to manufacture and seven petitions to process and distribute in commerce small quantities of PCBs for rersearch and development. EPA defines "Small Quantities for Research and Development" in 40 CFR 761.3 (ee) as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs but not for research or analysis for the development of a PCB product." The petitioners intend to manufacture, process, and distribute in commerce PCBs for use in health and environmental research, including research in the following areas: to analyze and monitor PCBs in the air, soil, rivers, and sediments; to conduct bioassay and toxicology studies; and to produce reference standards for identifying PCBs using gas chromatography. EPA has recognized the need for using **PCBs** in such research by authoring this use until July 1, 1984 (40 CFR 761.30 (j)), and is currently considering whether to reauthorize this use. EPA proposes to grant three manufacturing **exemptions** and five processing and distributions in commerce exemptions to the petitioners who are listed below for the following reasons:

EPA has concluded that granting these **exemptions** would not present an unreasonable risk of injury to health or the environment. Most of these petitioners want to manufacture, process, or distribute in commerce less than one kilogram of **PCBs** and only one petitioner requested an **exemption** to distribute in commerce as much as five kilograms of **PCBs. The PCBs** are manufactured and processed using laboratory practices that are designed to minimize human and environmental exposure to hazardous substances. The **PCBs** also are packaged and distributed in commerce in hermetically sealed containers no larger than 5.0 milliliters, which minimizes human and environmental exposure to PCBs during storage and shipment. Once these petitioners have distributed the PCBs, the risk of exposure to humans and the environment is minimized by the small quantities of PCBs used in each application, by the viscosity of the **PCBs,** and by the careful handling procedures typical of laboratory work. In addition, the petitioners asserted that denying the petitions would result in financial hardship.

Granting the **exemptions** would provide substantial benefits to society by allowing important health, environmental, and analytical research to continue. EPA has concluded that the good faith effort test is not relevant here, because their are no substitutes for pure **PCBs** for health and environmental research activities. Pure **PCBs** are needed for these activities, becuase commercial **PCBs** contain a mixture of isomers and contaminants which may adversely affect experimental results.

EPA proposes to grant **exemptions** for one year (or until July 1, 1984, if EPA does not extend the use authorization in 40 CFR 761.30(j)) to manufacture small quantities of **PCBs** for research and developoment to:

Analabs/Foxboro Analytical, Division of Foxboro Co., North Haven, CT 06473 (ME 6).

California Bionuclear Corp., Sun Valley, CA 91352 (ME 13).

Ultra Scientific, Inc., Hope, RI 02831 (ME 99.1).

In addition, EPA proposes to grant **exemptions** for one year (or until July 1, 1984, if EPA does not extend the use authorization in 40 CFR 761.30(j)) to process and distribute in commerce small quantities of **PCBs** for research and develpment to:

Analabs/Foxboro Analytical, Division of Foxboro Co., North Haven, CT 06473 (PDE 21.1).

California Bionuclear Corp., Sun Valley, CA 91352 (PDE 38.1).

Chem Service, Inc., West Chester, PA 19380 (PDE 41).

PolyScience Corp., Niles, IL 60648 (PDE 178).

Ultra Scientific, Inc., Hope, RI 02831 (PDE 282.1).

EPA proposes to deny the petitions of Pathfinder Laboratories, Inc., St. Louis, MO 63141 (ME 76 and PDE 174.1), and General Electric Co., Fairfield, CT 06431 (PDE 99), because neither of these petitioners provided the information necessary for EPA to conclude that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment.

Pathfinder did not provide information about the amount of **PCBs** to be manufactured, processed, and distributed in commerce (by pound and/or volume); the size of the containers in which the PCBs are packaged for distribution in commerce; how the containers are sealed; and the reasonably ascertainable economic consequences of denial.

General Electric did not provide information about the amount of PCBs to be processed and distributed in commerce (by pound and/or volume); the size of the containers in which the PCBs are packaged for distribution in commerce; how the containers are sealed; what it does to minimize human and environmental exposure to PCBs during processing; and the reasonably ascertainable economic consequences of denial.

*F. Microscopy*

EPA received two petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy. PCBs are used in art and historic conservation to preserve specimens for later study, and in identifying and preserving small particles, including environmental contaminants, industrial contaminants, and crime scene trace evidence. The identification of these particles is based on the form, structure, and optical properties of these particles as they appear relative to the optical properties of PCBs.

In mounting for microscopy, a particle is placed on a slide, a cover slip is placed over the particle, and a drop of PCB is placed near the interface of the cover slip and the slide. The slide is prepared on a slightly heated surface. The PCB moves under the cover slip through capillary action, and the particle is thereby permanently mounted. The principal users of PCBs are mineralogists and chemical microscopists in police crime laboratories, museum conservation laboratories, and laboratories identifying industrial and environmental contaminants. EPA recognized the need for using **PCBs** by authorizing the use of **PCBs** as a mounting medium in microscopy until July 1, 1984 (40 CFR 761.30(k)), and is currently considering whether to reauthorize this use. EPA proposes to grant an **exemption** to process and distribute in commerce **PCBs** for use as a mounting medium in microscopy, but to limit that **exemption** to uses in art and historic conservation, to the petitioners who are listed below for the following reasons:

EPA has concluded that granting a limited **exemption** would not present an unreasonable risk of injury to health or the environment. Each of these petitioners processes **PCBs** in small quantities, using laboratory practices designed to minimize human and evironmental exposure to **PCBs,** including the use of exhaust fume hoods and personal protective equipment. Once the petitoners have distributed the PCBs, the risk of exposure to humans and the environment is minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of museum laboratory work.

EPA believes that, of the many uses of PCBs as a mounting medium in microscopy, the use in art and historic conservation may be the only essential use. Sample particles from rare art and historic works can be taken, for the most part, only once. Thus, such samples must be permanently mounted in a medium that will not discolor or lose its optical properties in time. The only medium that has these properties at this time is PCBs, although work is underway to develop a substitute. These properties make PCBs attractive to

other users as well, but since these other users are not expected to be frequently called upon to prepare permanent slides of rare particles, the use of PCBs may be more a matter of convenience than of necessity. That is, other users would prefer to use PCBs to prepare a permanent slide once, instead of having to use a substitute mounting medium or having to prepare a new slide every ten years.

Although the costs of denying the petitions would be small (less than $6,500 according to the petitioners), granting the exemptions will provide substantial benefits to society by allowing specialized microscopy work in art and histroric conservation to continue.

EPA propses to grant **exemptions** for one year (or until July 1, 1984, if EPA does not extend the use authorization in 40 CFR 761.30(k)) to process and distribute in commerce **PCBs** for use as a mounting medium in microscopy in art and historic conservation to:

McCrone Research Institute, Chicago, IL 60616 (PDE 149)

R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE 181).

In additon to its request for an **exemption** to process and distribute **PCBs** for use as a mounting medium in microscopy, Cargille also requests an **exemption** to blend **PCBs** with mineral oil to produce microscope immersion liquids and calibration standards. Neither of these uses has been authorize by EPA. In fact, EPA determined in 1979 that there are adequate substitutes for **PCBs** for use as a microscope immersion liquid and as a refractive index oil and, therefore, did not authorized these uses of **PCBs** (USEPA, OTS, "Support Document/Voluntary Environmental Impact Statement," April 1979, pp. 99-101). Since these uses are not authorized, EPA proposes to deny this portion of Cargille's **exemption** petition.

*G. Honeywell*

Honeywell, Inc., Waltham, MA 02154 (ME 51 and PDE 119), petitioned EPA for an **exemption** to: (1) Import **PCB** equipment (i.e., computer assemblies and subassemblies containing **PCB** small capacitors) for purposes of repair, resale, and disposal; (2) distribute the repaired **PCB** equipment within the United States; and (3) export the repaired PCB equipment.

When a computer assembly or subassembly fails in service overseas, Honeywell ships a replacement part and imports the failed equipment for repair at its service facilities in the United States. Honeywell states that it discovers whether failed equipment contains PCB small capacitors only after the equipment has been imported, opened, and inspected. If a piece of equipment contains a defective PCB small capacitor, Honeywell removes and disposes of it in an EPA-approved incinerator and replaces it with a non-PCB capacitor. Honeywell estimated that it removes and disposes of five to 40 PCB small capacitors annually. However, if a PCB small capacitor is functional, as it usually is, Honeywell does not remove it. Rather, Honeywell repairs the equipment and places it back in stock for distribution within the United States and for export, as the need arises.

Honeywell stated that in 1981 it imported for repair 1,105 pieces of equipment, which are known to have contained, or are suspected of containing, PCB small capacitors. In addition, Honeywell stated that at the end of 1982 it had in stock 1,620 repaired pieces of equipment, which are known to have contained **PCB** small capacitors when manufactured. Honeywell was unable to estimate how many of these pieces of equipment still contain **PCB** small capacitors.

1. *Importing **PCB** Equipment.* Honeywell's petition for **exemption** to import **PCB** equipment is discussed under unit VII.H.1.

2. *Distributing **PCB** Equipment Containing **PCB** Small Capacitors Within the United States.* EPA proposes to grant Honeywell's petition to distribute its existing inventory of **PCB** equipment containing **PCB** small capacitors within the United States. This **PCB** equipment was previously imported, repaired, and placed back in stock. EPA has concluded that granting an **exemption** to distribute this existing inventory of **PCB** equipment would not result in an unreasonable risk of injury to health or the environment, because the **PCB** equipment contains only intact, nonleaking **PCB** small capacitors. In addition, EPA has concluded that Honeywell demonstrated a good faith effort to find substitutes for these

PCBs, since it stopped purchasing PCB small capacitors prior to 1979 and disposed of its inventory of PCB small capacitors held for purposes of repair in October 1982. Thus, Honeywell is in the same situation as petitioners who want to distribute their existing inventories of **PCB** equipment containing **PCB** small capacitors, which is discussed under unit VII.A.

Therefore, EPA proposes to grant an **exemption** for one year to distribute in commerce previously imported and repaird **PCB** equipment containing **PCB** small capacitors to Honeywell, Inc., Waltham, MA 02154 (PDE 119).

3. *Exporting **PCB** Equipment.* Honeywell's petition for **exemption** to export **PCB** equipment is discussed under unit VII.I.1.

*H. Importing **PCBs***

EPA received the following two petitions for **exemption** to Import **PCBs:**

1. *Honeywell.* Honeywell, Inc., Waltham, MA 02154 (ME 51), requested an **exemption** to import **PCB** equipment, the facts of which are described under unit VII.G. EPA proposes to deny Honeywell's petition, because granting an **exemption** would result in an unreasonable risk of injury to health or the environment. EPA has concluded that the added risk of exposure from importing **PCBs** into the United States outweighs the small costs of denial to Honeywell. Honeywell admitted that when the equipment is imported, Honeywell does not know whether the equipment contains PCB small capacitors and whether the capacitors are intact and nonleaking. Thus, there is a risk of exposure to humans and the environment to PCBs. Honeywell stated that it imports the non-functioning PCB equipment to its service facilities in the United States, because its overseas service facilities are currently unable to repair the equipment there and that it would cost $20,000 to set up proper overseas service facilities plus $10,000-$30,000 a year to identify and remove PCB small capacitors from the non-functioning equipment at these service facilities. EPA believes that the costs of setting up and operating the proper overseas facilities to identify and remove PCB small capacitors from the non-functioning equipment at these service facilities is not burdensome to Honeywell, whose 1982 sales revenues were $5.35 billion.

2. *Dow Corning.* Dow Corning Corporation, Midland, MI 48640 (ME 31.1), requested an **exemption** to import samples of **PCB**-containing fluid taken from **PCB** transformers, which have been retrofilled with Dow Corning's silicone transformer fluid, for purposes of testing and analysis. Dow Corning will analyze this fluid for **PCB** concentration, moisture content, and contaminants as part of its customer service program. The samples will be shipped in groups of five to ten individually packaged and hermetically sealed five milliliter vials. Dow Corning estimated that it will import two groups of samples, with a total of approximately 600 milliliters of fluid containing no more than 6 percent **PCBs,** per month. EPA proposes to grant Dow Corning's petition for the following reasons:

EPA has concluded that granting this **exemption** would not present an unreasonable risk of injury to health or the environment. The vials hold only a small volume of fluid containing **PCBs,** and granting an **exemption** would result in the importation of less than one pound of **PCBs** a year. Furthermore, the vials will be hermetically sealed, properly labeled, and assembled in packages with sufficient absorbent material to ensure that **PCBs** will not be released into the environment if an accident should occur.

To insure proper handling of samples, Dow Corning will train people who will ship these samples. Initially, Dow Corning intends to limit the number of people authorized to ship these samples and will instruct them in the safe handling of material containing PCBs, the proper precautions to minimize the incidence of spills, and the proper clean-up of spills. Trained personnel with experience in handling hazardous substances, including PCBs, will conduct or directly supervise the analyses of the samples in Dow Corning's laboratories in the United States. Dow Corning requires its workers to wear eye protection, prepare samples in a vented hood, take samples through a septum into a syringe, and weigh substances in sealed bottles, all of which will minimize exposure to PCBs. Dow Corning periodically audits its laboratories to assure that proper safety procedures are being followed.

Dow Corning claims that the costs of denial are confidential, but would be large enough to terminate the overseas marketing of its non-PCB transformer fluid. Dow Corning investigated having these fluids

tested abroad, but did not find a qualified laboratory that could perform the analyses at a cost that would allow its non-**PCB** transformer fluid to remain competitively priced with other transformer fluids.

EPA also has concluded that Dow Corning demonstrated a good faith effort to substitute non-**PCBs.** Indeed, Dow Corning's **exemption** petition to test the samples is an important part of its program to get customers to substitute Dow Corning's non-**PCB** transformer fluid for **PCB** transformer fluid. Granting this **exemption** will benefit society by promoting the use of a non-**PCB** transformer fluids as a substitute for **PCBs,** which will reduce **PCB** contamination both within the United States and abroad. In addition, Dow Corning's success in marketing the non-**PCB** transformer fluid abroad may indirectly help it market such substitutes in the United States, as the substitutes become more widely accepted and used. Thus, granting Dow Corning's **exemption** petition furthers EPA's goal of phasing out **PCBs.**

Therefore, EPA proposes to grant an **exemption** for one year to import samples of **PCB**-containing fluid taken from **PCB** transformers for purposes of testing and analysis to DOE Corning Corp., Midland, MI 48640 (ME 31.1).

*I. Exporting **PCBs***

EPA received three petitions for **exemptions** to export **PCBs.** EPA treats petitions to export **PCBs** more stringently than petitions to distribute **PCBs** within the United States, because it has no control over the distribution, use, and disposal of **PCBs** once the **PCBs** have been exported. In a policy statement published in the Federal Register of May 1, 1980 (45 FR 29115), EPA described specifically what petitioners who want to export **PCBs** must demonstrate to meet the statutory requirements of section 6(e)(3)(B) of TSCA: "EPA will not grant an **exemption** unless the nation to which export is destined has proper disposal facilities for ultimate disposal. EPA also will not grant an exemption for export for a use not authorized in the United States. In the context of exports, good faith efforts to find a substitute means the burden is on the petitioner to show that there are no substitutes for the PCBs, produced either by the petitioner or a competitor; and that the petitioner proves that it has expended substantial amounts of time and money searching for a substitute."

1. *Honeywell.* Honeywell, Inc., Waltham, MA 02154 (PDE 119), requested an **exemption** to export **PCB** equipment, the facts of which are described under unit VII.G. EPA proposes to deny Honeywell's petition, because granting an **exemption** would result in an unreasonable risk of injury to health or the environment. Honeywell produced no information to show that the nations to which export is destined have proper disposal facilities for the ultimate disposal of **PCBs.** Nor did Honeywell provide information about the reasonably ascertainable economic consequences of denying its petition to export **PCB** equipment.

2. *PolyScience.* PolyScience Corp., Niles, IL 60648 (PDE 178), requested an **exemption** to export small quantities of **PCBs** for research purposes. PolyScience wants to process and export reference standard kits, each of which contains 1.4 milligrams of **PCBs** for use by analytical chemists. Each kit contains **PCB** samples that are packaged in hermetically sealed 5 milliliter glass ampuls. EPA proposes to grant PolyScience's petition for the following reasons:

EPA has concluded that granting an **exemption** would not present an unreasonable risk of injury to health or the environment. PolyScience would export only a small amount of **PCBs** (approximately 14 milligrams) for purposes of scientific research as laboratory reference standards by analytical chemists. The risk of exposure to PCBs is small, because they are hermetically sealed, which minimizes exposure during storage and shipment. Once the PCBs have been distributed, the risk of exposure to humans and the environment is minimized by the small quantities of **PCBs** used in each application, by the viscosity of the **PCBs,** and by the careful handling procedures typical of laboratory work.

Although the costs of denial would be small (approximately $945 to $1,875), granting the **exemption** will provide substantial benefits to society by allowing important scientific research to continue. EPA has concluded that the good faith effort test is not relevant here, because there are no substitutes for pure **PCBs** for use as laboratory reference standards by analytical chemists.

EPA proposes to grant an **exemption** for one year (or until July 1, 1984, if EPA does not extend the use authorization in 40 CFR 761.30(j)) to PolyScience Corp., Niles, IL 60648 (PDE 178), to export small quantities of PCBs for research and development.

3. *Traco.* Traco Industrial Corp., New York, NY 10027 (PDE 276), submitted a petition to distribute in commerce **PCB** capacitors. Traco did not specifically request an **exemption** to export **PCBs,** but stated that "the capacitors are being sold to our overseas market that does not carry the restrictions of the U.S. market." EPA has considered this as a petition to export **PCBs.** Traco's stated reason for wanting to export PCBs is in direct opposition to the clear intent of TSCA, which is to minimize the addition of **PCBs** to the environment. Traco's only relief from the ban on exporting **PCBs** is to meet requirements of section 6(e)(3)(B) of TSCA for obtaining an **exemption.** Traco did not produce any information for EPA to conclude that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment. Traco produced no information to show that the nations to which export is destined have proper disposal facilities for the ultimate disposal of **PCBs.** Nor did Traco provide information about the reasonably ascertainable economic consequences of denial. Finally, Traco provided no information to show that it made a good faith effort to substitute non-**PCBs** for **PCBs.** Accordingly, EPA proposes to deny Traco's petition to export **PCBs.**

*J. Deferred Actions*

EPA received 50 **exemption** petitions to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater **PCBs.** The activities for which each of these petitioners requests **exemption** will be addressed in EPA's ongoing Uncontrolled **PCB** Rule. EPA is under a court order to issue a rule as a result of the U.S. Court of Appeals decision in *Environmental Defense Fund* v. *Environmental Protection Agency,* 636 F.2d 1267 (D.C. Cir. 1980). EPA has reported to the court that it will issue a proposed rule by December 1, 1983, and a final rule by July 1, 1984. Depending on the definition of **PCBs** and the method of calculating **PCB** concentration levels in that rulemaking, these petitioners may be excluded from the **PCB** Ban Rule and would not need **exemptions.** Thus, any proposal to grant or deny an **exemption** now would be premature.

Each of these petitions, except for the one submitted by Mobay Chemical Corp., requests an **exemption** for activities that were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce). In accordance with EPA's policy described in unit IV.C.1., each of these petitioners (except Mobay Chemical Corp.) is permitted to continue the activities for which it seeks **exemption** until EPA acts on the **exemption** petition, because such activities where underway before the effective dates of the ban on **PCBs.** Mobay Chemical Corp. is not permitted to engage in the activities for which it seeks **exemption** until EPA acts on the **exemption** petition, because such activities were not underway before July 1, 1979.

Therefore, EPA is deferring action on the following petitions until it proposes the Uncontrolled **PCB** Rule in December 1983:

Manufacturing **Exemptions**

Aluminum Co. of America, Pittsburgh, PA 15219 (ME 3).

American Hoechst Corp., Somerville, NJ 08876 (ME 5).

Diamond Shamrock Corp., Pasadena, TX 77501 (ME 27).

Dow Chemical Co., Midland, MI 48640 (ME 29, 30, and 30.1).

General Electric Co., Fairfield, CT 06431 (ME 39).

Hilton-Davis Chemical Co., Division of Sterling Drug Inc., Cincinnati, OH 45237 (ME 50).

Honeywell, Inc., Waltham, MA 02154 (ME 51).

Olin Corp., Stamford, CT 06904 (ME 75).

PPG Industries, Inc., Pittsburgh, PA 15222 (ME 81 and 81.1).

SDS Biotech Corp., Painesville, OH 44077 (ME 28 and 28.1).

Stauffer Chemical Co., Westport, CT 06880 (ME 90).

Processing and Distribution in Commerce Exemptions

Acme Printing Ink Co., Chicago, IL 60607 (PDE 164.1).

Aluminum Co. of America, Pittsburgh, PA 15219 (PDE 13).

American Can Co., Greenwich, CT 06830 (PDE 14).

American Cyanamid Co., Savannah, GA 31402 (PDE 16).

American Hoechst Corp., Somerville, NJ 08876 (PDE 70.5).

American Paper Institute, Inc., Washington, DC 20036 (PDE 89)

American Thermoplastics Corp., Subsidiary of Phillips Petroleum Co., Houston, TX 77020 (PDE 245.1).

Binney & Smith, Inc., Easton, PA 18042 (PDE 34).

Buckeye Printing Ink Co., Inc., Columbus, OH 43215 (PDE 164.2).

Chemical Specialties Manufacturers Association, Washington, DC 20036 (PDE 42).

Columbia Paint Corp., Huntington, WV 25728 (PDE 47).

Crown Metro, Inc., Greenville, SC 29606 (PDE 70.1).

Daicolor Division, Dainichiseika Color & Chemicals America, Inc., Pine Brook, NJ 07058 (PDE 58).

Dow Chemical Co., Midland, MI 48640 (PDE 64 and 67).

Dow Chemical Co., Plaquemine, LA 70764 (PDE 68).

Eastman Kodak Co., Eastman Chemicals Division, Kingsport, TN 37662 (PDE 70.6).

Forrest Paint Co., Eugene, OR 97402 (PDE 90).

Galaxie Chemical Corp., Paterson, NJ 07524 (PDE 95).

Goodyear Tire & Rubber Co., Akron, OH 44316 (PDE 102).

Hilton-Davis Chemical Co., Division of Sterling Drug Inc., Cincinnati, OH 45237 (PDE 70.4).

Ideal Toy Corp., Hollis, NY 11423 (PDE 70.3).

Inmont Corp., Clifton, NJ 07015 (PDE 123).

Minnesota Mining & Manufacturing Co., St. Paul, MN 55133 (PDE 157.2).

Mobay Chemical Corp., Dyes and Pigments Division, Union, NJ 07083 (PDE 157.10).

National Association of Chemical Distributors, Chicago, IL 60602 (PDE 162).

National Paint and Coatings Association, Washington, DC 20005 (PDE 167).

Prestige Printing Ink Co., Fort Worth, TX 76105 (PDE 70.2).

Reed Plastics Corp., Holden, MA 01520 (PDE 224).

Soap and Detergent Association, New York, NY 10016 (PDE 244).

Society of the Plastics Industry, Inc., New York, NY 10017 (PDE 245).

Uniroyal Chemical Co., Rovel Polymers Group, Naugatuck, CT 06770 (PDE 283).

Uniroyal, Inc., Middlebury, CT 06749 (PDE 284).

U.S. Department of the Treasury, Bureau of Engraving and Printing, Washington, DC 20228 (PDE 288).

United States Printing Ink Co., East Rutherford, NJ 07073 (PDE 164.3).

VIII. Exective Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule is not a major rule as the term is defined in section 1(b) of the Executive Order.

EPA has concluded that this proposed rule is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will

not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule allows the continued manufacture, processing, and distribution in commerce of **PCBs** that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for **PCB Exemptions.**

Although this proposal is not a major rule, EPA has prepared an Economic Impact Analysis using the guidance in the Executive Order to the extent possible. This proposed rule was submitted to the Office of Management and Budget (OMB) prior to publication, as required by the Executive Order.

IX Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA has tried to estimate the cost of this proposed rule on small businesses, whose petitions EPA proposes to deny. For purposes of this regulatory flexibility analysis, EPA considers a small business to be one whose annual sales revenues were less than $30 million. This cutoff is in accordance with EPA's Notice of Proposed Rulemaking for defining small businesses for purposes of reporting under section 8(a) of TSCA, which was published in the Federal Register of June 23, 1982 (47 FR 27206).

EPA proposes to deny four **exemption** petitions that were submitted by small businesses who want to distribute in commerce **PCB** small capacitors and **PCB** equipment containing **PCB** small capacitors. None of these petitioners provided any information about the economic consequences of denial. However, based on other information provided by two of the petitioners, EPA was able to estimate the economic costs of denying those two petitions. EPA estimated the cost of denial to Traco Industrial Corp. to be $65,100, or roughly one percent of its 1981 sales revenues of $6 million. EPA estimated the cost of denial to Trans-State Corp. to be $37,200, or roughly 1.5 percent of its 1981 sales revenues of $2.5 million.

EPA is proposing to deny 31 **exemption** petitions that were submitted on behalf of approximately 330 small businesses who want to process and distribute in commerce **PCBs** in servicing customers' transformers. Based on information provided in these petitions, EPA estimated the cost of denying all these petitions to be approximately $20,000 to $36,000: this includes $17,500 to $29,200 for processing and distributing in commerce PCB fluid and $2,500 to $6,800 for processing and distributing in commerce PCB-contaminated fluid. Assumimg these costs are divided evenly among the approximately 330 servicing companies represented by the petitions, the average annual cost would be less than $90 per company for denying petitions to process and distribute in commerce PCB fluid and less than $20 per company for denying petitions to process and distribute in commerce PCB-contaminated fluid.

EPA proposes to deny the 12 petitions that were submitted on behalf of approximately 300 small businesses who want to process and distribute in commerce PCBs in buying and selling transformers. Based on the limited information provided in these petitions, EPA could estimate only the costs of denying these petitions on an individual tranformer basis. EPA estimated that the incremental costs of denial would be approximately $90 to $240 for an average size PCB-contaminated transformer and $2,400 to $4,000 for an average size PCB transformer, assuming all the transformer fluid had to be replaced in both cases. Depending on the purchase price and resale value of used transformers, these additional costs may render a portion of petitioners' buying and selling activities unprofitable. EPA was unable to estimate the total costs of denial, because the petitioners did not provide information about the number of transformers to be bought and sold, the purchase price and resale value of such transformers, and estimates of the costs of denial.

EPA proposes to deny Traco Industrial Corp.'s petition to export **PCB** small capacitors. Traco did not provide any information about the costs of denying its petition to export **PCBs,** and EPA was unable to estimate such costs.

EPA proposes to grant a limited **exemption** to two petitioners to process and distribute in commerce **PCBs** for use as a mounting medium in microscopy and to deny the portion of R.P. Cargille Laboratories' petition to process and distribute in commerce **PCBs** for uses in microscopy that EPA has not authorized. The costs of denial would be less than $2,000 for McCrone Research Institute and less than $4,500 for Cargille, which were the upper bounds estimated by the petitoners. Cargille's petition stated that the "economic consequences of denying the petition are quite small."

EPA proposes to deny Pathfinder Laboratories, Inc.'s petition to manufacture, process, and distribute PCBs for purposes of research and development. Pathfinder did not provide information about the costs of denial, and EPA was unable to estimate such costs.

Therefore, in accordance with section 605(b) of the Act, I certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. EPA solicits comments from petitioners and other interested persons concerning the economic impact of this proposed rule on small business entities. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to agency action. Section 6(e)(3)(A) of TSCA and EPA's **PCB** Ban Rule, 40 CFR Part 761, prohibit the manufacture, processing, and distribution in commerce of **PCBs.** Section 6(e)(3)(B) of TSCA permits EPA to grant **exemptions** from these prohibitions, if it finds that petitioners have demonstrated that granting an **exemption** would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for **PCBs.** Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an **exemption** petition from a small business, it could do so only if the small business met the requirements set forth in TSCA.

## X. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.* , authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. EPA's information collection requests for this proposed rule were approved by OMB and were assigned OMB Control Number 2000-0466.

Future information collection requests will be submitted to OMB for approval under section 3504(b) of the PRA.

## XI. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filled indocket number OPTS-66001 (manufacturing exemptions) and OPTS-66022 (processing and distribution in commerce exemptions) is being consolidated into one docket number OPTS-66008.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents, which constitutes the record of this proposed rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. However, public comments, the transcript of the rulemaking hearing, or submissions made at the rulemaking hearing, or submissions made at the rulemaking hearing or in connection with it will not be listed, because these documents are exempt from Federal Register listing under section 19(a)(3). A full list of these materials will be available on request from EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

### *A. Previous Rulemaking Records*

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (**PCBs**); Proposed Rulemaking for **PCB** Manufacturing **Exemptions,**" Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (**PCBs**) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

*B. Federal Register Notices*

(7) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (**PCBs**) Ban **Exemption.**"

(8) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (**PCBs**); Policy for Implementation and Enforcement."

(9) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for **Exemptions** from the Polychlorinated Biphenyl (**PCB**) Processing and Distribution in Commerce Prohibitions."

(10) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (**PCBs**); Proposed Rulemaking for **PCB** Manufacturing **Exemptions.**"

(11) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (**PCBs**); Manufacturing **Exemptions;** Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(12) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (**PCBs**); Statement of Policy on All Future **Exemption** Petitions."

(13) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (**PCBs**); Expiration of the Open Border Policy for **PCB** Disposal."

*C. Support Documents*

(14) USEPA, OTS, "**PCB Exemption** Petitions Economic Impact Analysis" (July 1983).

(15) USEPA, OTS, "Response to Comments on Health Effects of **PCBs**" (August 1982).

(16) USEPA, OTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use Ban Regulation: Economic Impact Analysis" (April 1979).

(17) USEPA, OPTS, EED, Letter from Marigene H. Butler, Philadelphia Museum of Art, to Martin P. Halper, EPA, "Use of PCBs in Microscopy" (April 29, 1983).

(18) USEPA, OPTS, EED, Telephone Communication between Denise Keehner, EPA, and Martha Goodway, Smithsonian Institution, "Use of PCBs in Microscopy" (May 9, 1983).

*D. Reports*

(19) USEPA, ORD, EMSL, "A Method for Sampling and Analysis of Polychlorinated Biphenyls (**PCBs**) in Ambient Air" (August 1978). EPA-600/4-78-048.

*E. Other*

(20) Manufacturing **Exemption** Petitions and Related Communications in Docket No. OPTS-66001.

(21) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS-66002.

EPA will identify the complete rulemaking record on or before the date of promulgation of the final rule, as prescribed by section 19(a)(3) of TSCA. EPA will consider for inclusion in the record additional material submitted at any time between the publication of this proposed rule and the date the Agency identifies the final record. The final rule also will permit persons to point out any omissions or errors in the record.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: October 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 761 -- [AMENDED]

Therefore, it is proposed that 40 CFR Part 761 be amended by adding a new Subpart E consisting at this time of § 761.80 to read as follows:

Subpart E -- **Exemptions**

§ 761.80 Manufacturing, Processing, and Distribution in Commerce **Exemptions.**

(a) The Administrator grants an **exemption** for one year to distribute in commerce **PCB** small capacitors for purposes of repair to:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE 4).

(2) Air Conditioning Contractors of America, Washington, DC 20036 (PDE 26.2).

(3) Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE 26.2).

(4) B & B Motor & Control Corp., New York, NY 10012 (PDE 30).

(5) Complete-Reading Electric Co., Hillside, IL 60162 (PDE 48).

(6) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE 71).

(7) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE 84).

(8) Harry Alter Co., Chicago, IL 60609 (PDE 111).

(9) Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE 161).

(10) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE 157.1).

(11) National Association of Electrical Distributors, Stamford, CT 06901 (PDE 163).

(12) National Capacitor Corp., Garden Grove, CA 92641 (PDE 165).

(13) Service Supply Co., Phoenix, AZ 85013 (PDE 237).

(14) Wedzeb Enterprises, Inc., Lebanon, IN 46052 (PDE 297).

(15) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

(b) The Administrator grants an **exemption** for one year to distribute in commerce **PCB** equipment containing **PCB** small capacitors to:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE 4).

(2) Coleman Co., Inc., Wichita, KS 67201 (PDE 45.1).

(3) Donn Corp., Westlake, OH 44145 (PDE 63).

(4) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE 71).

(5) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE 84).

(6) Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE 93).

(7) Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE 103).

(8) GTE Products Corp., Danvers, MA 01923 (PDE 105).

(9) King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE 139).

(10) L. E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE 223).

(11) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE 157.3).

(12) National Association of Electrical Distributors, Stamford, CT 06901 (PDE 163).

(13) Royalite Co., Flint, MI 48502 (PDE 231).

(14) Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE 246).

(15) Transco, Inc., West Columbia, SC 29169 (PDE 276.1).

(16) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

(c) The Administrator grants an **exemption** for one year to process **PCB** small capacitors and **PCB** equipment containing **PCB** small capacitors into other equipment and to distribute in commerce that equipment to:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE 4).

(2) Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE 103).

(3) GTE Products Corp., Danvers, MA 01923 (PDE 105).

(4) L. E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE 223).

(5) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE 298).

(d) The Administrator grants an **exemption** for one year (or until July 1, 1984, if EPA does not extend the use authorization in § 761.30(j)) to manufacture small quantities of **PCBs** for research and development to:

(1) Analabs/Foxboro Analytical, Division of Foxboro Co., North Haven, CT 06483 (ME 6).

(2) California Bionuclear Corp., Sun Valley, CA 91352 (ME 13).

(3) Ultra Scientific, Inc., Hope, RI 02831 (ME 99.1).

(e) The Administrator grants an **exemption** for one year (or until July 1, 1984, if EPA does not extend the use authorization in § 761.30(j)) to process and distribute in commerce small quantities of **PCBs** for research and development to:

(1) Analabs/Foxboro Analytical, Division of Foxboro Co., North Haven, CT 06473 (PDE 21.1).

(2) California Bionuclear Corp., Sun Valley, CA 91352 (PDE 38.1).

(3) Chem Service, Inc., West Chester, PA 19380 (PDE 41).

(4) PolyScience Corp., Niles IL 60648 (PDE 178).

(5) Ultra Scientific, Inc., Hope, RI 02831 (PDE 282.1).

(f) The Administrator grants an **exemption** for one year (or until July 1, 1984, if EPA does not extend the use authorization in § 761.30(k)) to process and distribute in commerce **PCBs** for use as a mounting medium in microscopy in art and historic conservation to:

(1) McCrone Research Institute, Chicago IL 60616 (PDE 149).

(2) R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE 181).

(g) The Administrator grants an **exemption** for one year to distribute in commerce previously imported and repaired **PCB** equipment containing **PCB** small capacitors to:

(1) Honeywell, Inc., Waltham, MA 02154 (PDE 119).

(2) [Reserved] .

(h) The Administrator grants an **exemption** for one year to import samples of **PCB**-containing fluid taken from **PCB** transformers for purposes of testing and analysis to:

(1) Dow Corning Corp., Midland, MI 48640 (ME 31.1).

(2) [Reserved].

(i) The Administrator grants an **exemption** for one year (or until July 1, 1984, if EPA does not extend the use authorization in § 761.30(j)) to export small quantities of **PCBs** for research and development to:

(1) PolyScience Corp., Niles, IL 60648 (PDE 178).

(2) [Reserved].

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